

Re. : Amendment and Response to Office Action Mailed September 16, 2005
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Filed : September 23, 2003

III. AMENDMENTS TO THE DRAWINGS

The attached replacement sheets of drawings are formal drawings to replace the drawings originally filed. The attached replacement sheets of drawings also include an amendment to Figure 1 that adds the legend "PRIOR ART" to Figure 1 and removes references B'-3 and B'-4. These attached replacement sheets of drawings, which include Figures 1-6, replace the original sheets of drawings which included Figures 1-6.

An annotated or marked-up sheet of drawings for Figure 1 is also attached. The annotated sheet of drawings shows the proposed drawing corrections in red ink.

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IV. REMARKS

The Office Action rejected Claims 1-23. By the foregoing amendments, Applicants amended Claim 1; cancelled Claims 2-23 without prejudice; and added new Claims 24-44 to further clarify, more clearly define and/or broaden the claimed invention, and expedite receiving a notice of allowance. Pursuant to 37 C.F.R. § 1.121(f), no new matter is introduced by these amendments. After these amendments, Claims 1 and 24-44 are now pending in the application. Applicants believe that Claims 1 and 24-44 are now in condition for allowance.

Please note that Applicants' remarks are presented in the order in which the issues were raised in the Office Action for the convenience and reference of the Examiner. In addition, Applicants request that the Examiner carefully review any references discussed below to ensure that Applicants' discussion and understanding of the references, if any, is consistent with the Examiner's. Further, the following remarks are not intended to be an exhaustive enumeration of the distinctions between any particular reference and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed invention and that reference.

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A. Information Disclosure Statement

The Office Action stated that the information disclosure statement filed April 14, 2005 fails to comply with the provisions of CFR 1.97, 1.98 and MPEP § 609. In particular, the Office Action stated that foreign patent 223,700 is missing Fig. 1 and therefore has not been considered. The Office Action stated that the other foreign patents crossed out were not considered because they fail to include an English abstract, a translation or a statement of relevance. The Office Action stated that, as for the court documents/proceedings, there has not been provided an explanation of relevance/ an explanation as to why these papers are pertinent (so as to merit inclusion as prior art for this application). The Office Action stated that, if portions of these documents are pertinent, these portions need to be specifically directed to and identified. The Office Action stated that these references have been placed in the application file, but the information referred to therein has not been considered as to the merits.

As to foreign patent 223,700, the enclosed Information Disclosure Statement includes a new copy of foreign patent 223,700 with Figure 1.

As to the foreign patents that were not considered because they fail to include an English abstract, a translation or a statement of relevance, Applicants respectfully submit that these foreign patents may be pertinent, *inter alia*, for the structure shown in their drawings and therefore requests consideration of these foreign patents. In addition, any available English abstracts and other information related to these patents is included in the enclosed Information Disclosure Statement.

As to the court documents/proceedings submitted previously, Applicants submitted these documents in accordance with MPEP § 2001.06(c). In particular, MPEP § 2001.06(c) states:

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Where the subject matter for which a patent is being sought is or has been involved in litigation, the existence of such litigation and any other material information arising therefrom must be brought to the attention of the U.S. Patent and Trademark Office. Examples of such material information include evidence of possible prior public use or sales, questions of inventorship, prior art, allegations of “fraud,” “inequitable conduct,” and “violation of duty of disclosure.” Another example of such material information is any assertion that is made during litigation which is contradictory to assertions made to the examiner. *Environ Prods., Inc. v. Total Containment, Inc.*, 43 USPQ2d 1288, 1291 (E.D. Pa. 1997). Such information might arise during litigation in, for example, pleadings, admissions, discovery including interrogatories, depositions, and other documents and testimony.

MPEP § 2001.06(c), at 2000-6. Applicants submitted these documents because the litigation involved subject matter generally relates to tables and, in particular, to tables with blow-molded plastic table tops. Applicants submitted these documents out of an abundance of caution because Applicants wanted to ensure that all documents were disclosed to the Examiner in accordance with MPEP § 2001.06(c).

B. Objection to Drawings

The Office Action objected to the drawings. In particular, the Office Action stated that Figure 1 should be designated by a legend such as --Prior Art--because only that which is old is illustrated. See MPEP § 608.02(g). The Office Action stated that the drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 22. The Office Action stated that the drawings are also objected to as failing to comply to 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: B-3, B-4, and 2’.

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1. “Prior Art” Legend

As set forth above, Applicants amended Figure 1 to include the “Prior Art” legend and therefore request that the objection based upon the omission of the “Prior Art” from the drawings be withdrawn.

2. References B’-3, B’-4

Applicants amended Figure 1 to remove the references B’-3, B’-4 and therefore request that the objections based upon the inclusion of the references B’-3, B’-4 in the drawings be withdrawn.

3. References 22, 2’

As set forth above, Applicants amended the specification to conform the specification to Figure 2. In particular, Figure 2 illustrates that a center bar 2’ may be connected to a bar 5 and that the bar 5 may be connected to a strut 4:

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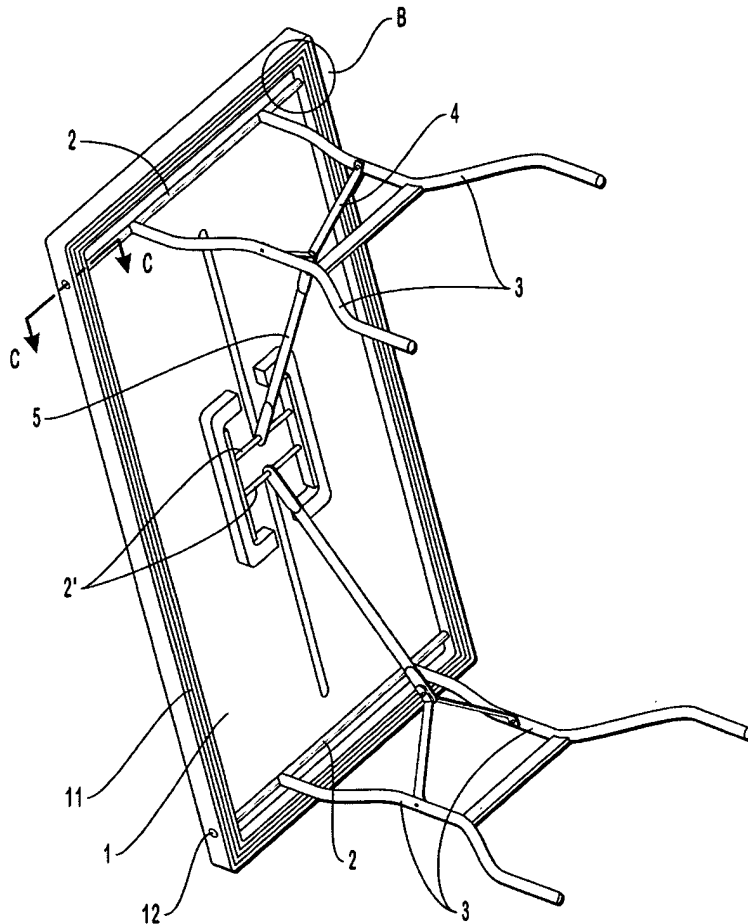


Fig. 2

Accordingly, Applicants amended paragraph [055] of the specification by replacing the reference 22 with the reference 2' to conform the specification to Figure 2:

[055] As shown in Figure 2, table top 1 also has two U-shaped inner lips which face each other. The interior surface of the inner lips has connecting apertures similar to those described above. **In addition, bushings or sleeves similar to those described above may be used to align an end of a center bar 2' ~~22~~ therein. The center bar 2' ~~22~~ is shown connected to an end of support bar 5. The other end of support bar 5 is connected to a V-shaped strut 4. The other end of V-shaped strut 4 is connected to a table leg 3.**

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Consequently, the description now properly includes the reference 2' and no longer includes the reference 22.

Because the description no longer includes the reference 22, the drawings need not include the reference 22, and Applicants therefore request that the objection based upon the omission of the reference 22 from the drawings be withdrawn.

Further, because the description now includes the reference 2', the reference 2' need not be removed from the drawings, and Applicants therefore request that the objection based upon the inclusion of the reference 2' in the drawings be withdrawn.

C. Objection to Specification

The Office Action objected to the disclosure. In particular, the Office Action stated that on page 12, paragraph 58, the second connecting aperture should be designated 12'.

As set forth above, Applicants amended paragraph [058] to refer to the second connecting aperture 12', as requested. Accordingly, Applicants request that this objection be withdrawn.

D. Rejection under 35 U.S.C. § 112

The Office Action rejected Claim 17 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. In particular, the Office Action stated that, for Claim 17, "the at least one groove" lacks antecedent basis.

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Applicants traverse this rejection. However, as mentioned above, Applicants cancelled Claim 17 without prejudice, rendering this rejection moot. Accordingly, Applicants request that this rejection be withdrawn.

E. Double Patenting Provisional Rejection

The Office Action rejected Claims 1-23 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-21 of co-pending U.S. patent application serial no. 10/668,746.

Applicant respectfully traverses this rejection. However, as stated in the Office Action, a timely filed terminal disclaimer in compliance with 37 C.F.R. § 1.321(c) may be used to overcome an actual or provisional rejection based on a non-statutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. *See* 37 C.F.R. § 1.130(b).

Accordingly, in order to expedite receiving a Notice of Allowance, Applicant submits herewith a timely filed terminal disclaimer in compliance with 37 C.F.R. § 1.321(c). Applicant is also submitting herewith two Certificates under 37 C.F.R. § 3.73(b) establishing that U.S. patent application serial no. 10/668,746 and this application are commonly owned by Assignee, Lifetime Hong Kong, Limited.

In particular, the first Certificate under 37 C.F.R. § 3.73(b) demonstrates that Assignee Lifetime Hong Kong, Limited is the owner of U.S. patent application serial no. 10/668,746. The second Certificate under 37 C.F.R. § 3.73(b) demonstrates that Assignee Lifetime Hong Kong, Limited is the owner of this application. Accordingly, Applicant requests that this rejection be

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withdrawn. This terminal disclaimer is accompanied by the fee set forth in 37 C.F.R. § 1.20(d) in the amount of \$130.00.

F. Rejections under 35 U.S.C. § 102(b)

The Office Action rejected Claims 1, 3, 4, 8, 14, 16, 18 and 19 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,921,623 issued to Nye et al. In particular, the Office Action stated that the Nye patent teaches a table (Fig. 2A) comprising: a plastic blow molded table top (12) having a lip (see depending portion of 12 in Fig. 2A and Attachment A) with interior, outer and bottom surfaces and a first connecting aperture (82) located in the interior surface; a first table leg (30); and a first cross pole (62) attached to a first end of the table leg and disposed in the first connecting aperture. The Office Action states that the lip also includes a groove/recess (64). The Office action states that, since the Nye patent teaches all of the structural limitations found in the method claims, the method steps would be inherently provided for.

The Office Action rejected Claims 1, 2, 5, 10, 14, 15 and 20 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,394,808 issued to Dutro. In particular, the Office Action stated that the Dutro patent teaches a table (Fig. 1; see Attachment B) comprising: a plastic molded table top (12) having a lip (14) with interior, outer and bottom surfaces, a first connecting aperture (inner opening) located in the interior surface and a second connecting aperture (outer opening) located in the exterior surface; a sleeve (38); a first table leg (24); and a first cross pole (23) attached to a first end of the table leg and disposed in the first and second connecting apertures. The Office Action stated, since the Dutro patent teaches all of the

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structural limitations found in the method claims; the method steps would inherently be provided for.

Applicants respectfully traverse these rejections because the Dutro patent and the Nye patent fail to disclose each and every limitation of Claims 1, 2, 5, 10, 14, 15 and 20. Nevertheless, as mentioned above, to further clarify, more clearly define and/or broaden the claimed invention, and expedite receiving a notice of allowance, Applicants have amended Claim 1 to recite “a plurality of grooves formed in the lip” and “a first end of the first cross pole being at least partially disposed in the first connecting aperture, the plurality of grooves abutting the first end of the first cross pole.” Thus, Claim 1 now recites a blow-molded table top comprising a lip, a first connecting aperture formed in an interior surface of the lip, a first cross pole including a first end that is at least partially disposed in the first connecting aperture, and a plurality of grooves formed in the lip that abut the first end of a cross pole.

Support for this amendment may be found, *inter alia*, in Figures 4-5 and in the specification. For example, the specification states:

[056] Figure 5 illustrates another embodiment for connecting table top 1 to cross pole 2. Figure 5 illustrates that cross pole 2 can be directly disposed in a connecting aperture 12 without the use of other connecting pieces. Although not shown, grooves 14 or recess 13 may be formed on lip 11. Grooves 14 may be configured to abut cross pole 2. Recess 13 may be configured to engage an end of cross pole 2.

Figure 5 illustrates a cross pole 2 disposed in an aperture 12:

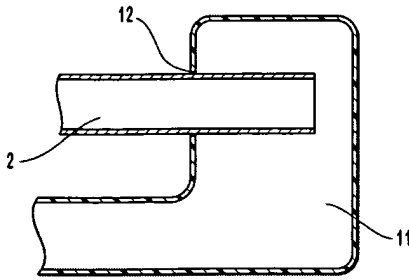


Fig. 5

Figure 4 illustrates a plurality of grooves 14:

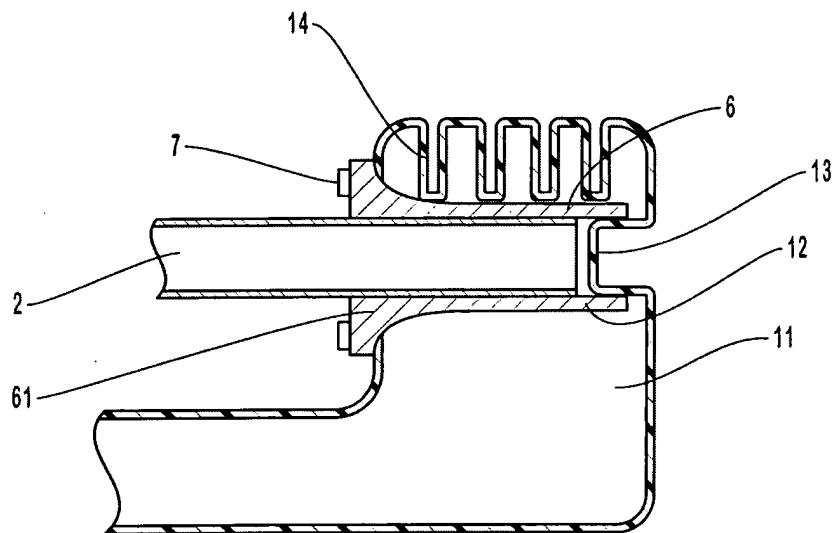


Fig. 4

In contrast, the Nye Patent discloses that an edge of a side rail fits in a notch. For example, Figure 2 illustrates an edge of a side rail of the table top frame 34 that fits in a notch 44:

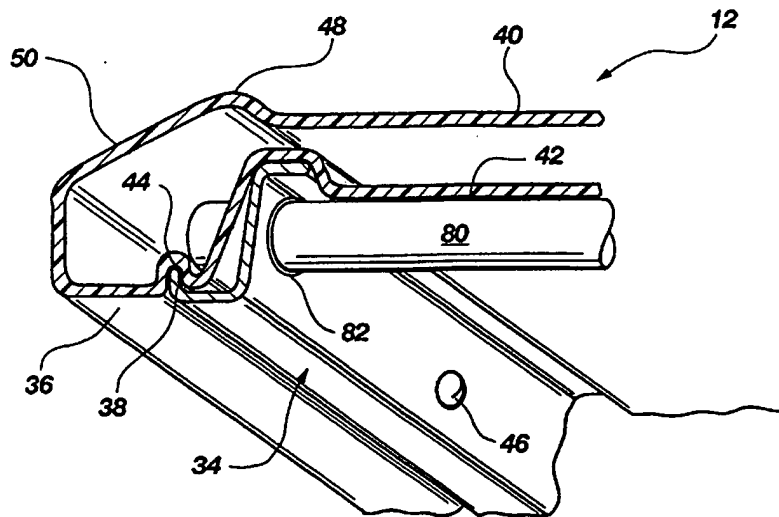


Fig. 2

In addition, as shown in Figure 3, an edge of a side rail of the bench frame 54 fits in a notch 64:

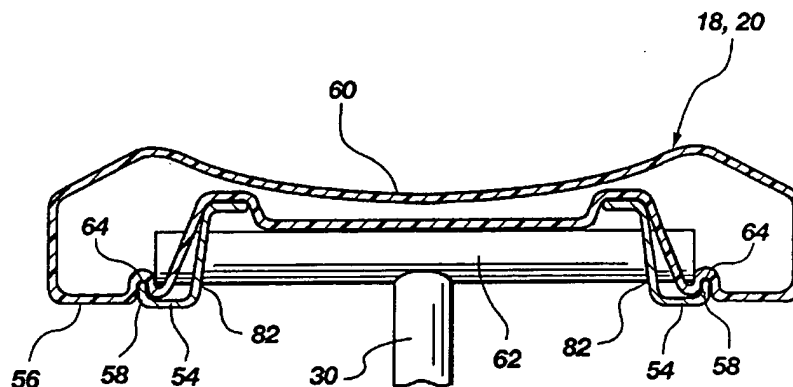


Fig. 2A

The Nye patent explains that its notches are intended to receive an edge of a side rail:

The table top counter 36 of the preferred embodiment fits snugly over the table top frame 34 and includes a notch 44 in which the locking lip 38 of the frame 34 fits.¹

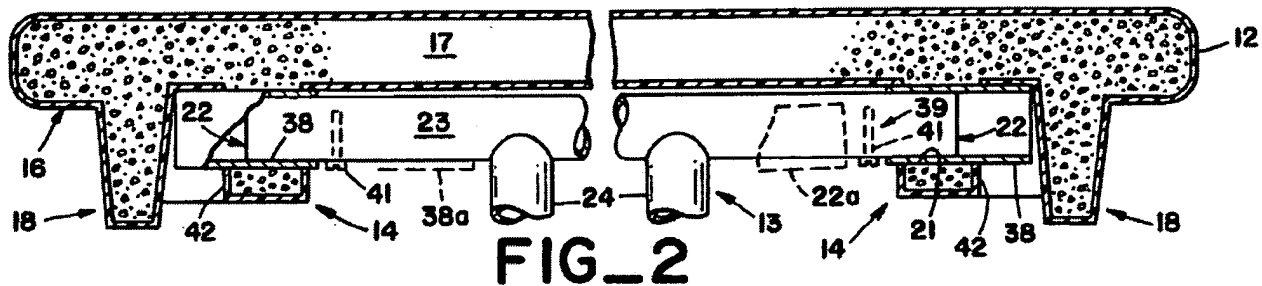
The bench counter 56 fits snugly over the bench frame 54 and includes a notch 64 in which the locking lip 58 of the frame 54 fits.²

¹ Nye, 4:37-39.

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However, the Nye patent does not disclose a plurality of notches 44, 64 that abut the same end of a cross pole. Moreover, it would not be obvious to modify the Nye patent to include a plurality of notches that abut the same end of a cross pole. As mentioned above, the Nye patent's notches are intended to receive an edge of a side rail. After a first notch received the edge of the side rail, an additional notch would have nothing to receive and, thus, would have no purpose. One skilled in the art would have no motivation (i.e., no purpose) for adding an additional notch.³ Further, even assuming for the sake of argument that an additional notch were added, one skilled in the art would not have any motivation to position the additional notch to abut the same end of the cross pole that a first notch abutted.

While the Nye patent does not disclose a plurality of notches that abut the same end of a cross pole, the Dutro patent does not disclose even one such notch:



Accordingly, Applicants submit that Claim 1 is allowable and request that this rejection of Claim 1 be withdrawn.

² *Id.* 5:4-7.

³ Applicants note that the Nye patent is distinguishable from the prior art references cited in the “duplication of parts” cases. See MPEP § 2144.04, VI.B at 2100-147. In the “duplication of parts” cases, the duplicated parts provided additional utility. Thus, one of ordinary skill would be motivated to duplicate the parts shown in the prior art references in order to obtain that additional utility. In contrast, a duplicated notch 44, 64 would provide no additional utility for the Nye table. Consequently, a person of ordinary skill would have no motivation to duplicate the notches 44, 64 of the Nye patent.

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G. Rejection under 35 U.S.C. § 103(a)

The Office Action rejected Claims 6-7 under 35 U.S.C. § 103(a) as being unpatentable over the Dutro patent.

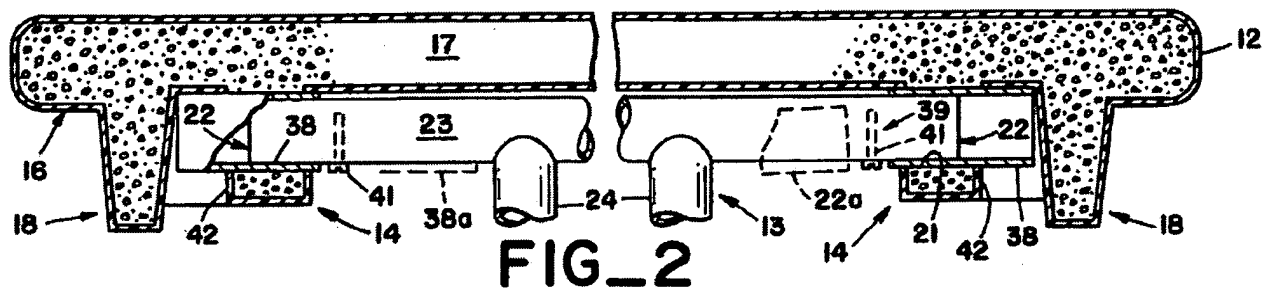
In particular, the Office Action stated that the Dutro patent teaches the limitations of Claims 1 and 2, including a sleeve. The Office Action stated that, for Claim 6, the Dutro patent fails to teach that the sleeve has a square cross section. In the Office Action, official notice was taken that sleeves with square cross sections are well known in the art. The Office Action therefore concluded that it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the sleeve of the Dutro patent by making it square in cross section, depending on the desired need of the person constructing the table, e.g. depending on the sleeves readily available, to help slow/control motion of the cross pole within the sleeve, etc. The Office Action noted that there is no reason given in the disclosed specification as to why a square sleeve would be beneficial in the table.

The Office Action stated that, for Claim 7, the Dutro patent fails to teach that the sleeve has a fixing plate. In the Office Action, official notice was taken that sleeves with fixing plates (having fastener openings therein) are well known in the art. The Office Action therefore concluded that it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the sleeve of the Dutro patent by adding a fixing plate (having fastener openings therein) to the inner end portion thereof, depending on the desired need of the person constructing the table, e.g. to provide a means on the end of the sleeve to help keep it in position on the lip.

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Applicants respectfully traverse this rejection, *inter alia*, because the Dutro patent fails to disclose each and every limitation of Claims 6-7 and because the cited references provide no teaching, suggestion or motivation to modify the Dutro patent as proposed in the Office Action.

Moreover, Applicants respectfully submit that the Dutro patent teaches away from the proposed modification. In particular, the Dutro patent teaches away from the use of a fixing plate (as recited in Claim 7) by emphasizing the use of threaded screws 41 to limit the movement of the bushings 38 relative to the "member 23":



See Dutro, 5:19-56.

Nevertheless, as mentioned above, Applicants cancelled Claims 6-7 without prejudice, rendering this rejection moot. Accordingly, Applicants request that this rejection be withdrawn.

H. New Claims

New Claims 24-44 have been added to more fully define the Applicants' invention and are believed to be fully distinguished over the cited references.

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CONCLUSION

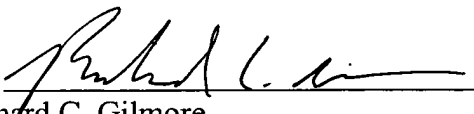
In view of the foregoing, Applicants submit that Claims 1 and 24-44 are allowable over the cited references and are in condition for allowance. Accordingly, Applicants request that a Notice of Allowance be promptly issued.

If any further impediments to allowance of this application remain, the Examiner is cordially invited to contact the undersigned by telephone so that these remaining issues may be promptly resolved.

The Commissioner is authorized to charge payment of any additional fees associated with this communication, which have not otherwise been paid, to Deposit Account No. 23-3178. If any additional extension of time is required, which have not otherwise been requested, please consider this a petition therefore and charge any additional fees that may be required to Deposit Account No. 23-3178.

Respectfully submitted,

Dated: Feb. 16, 2006

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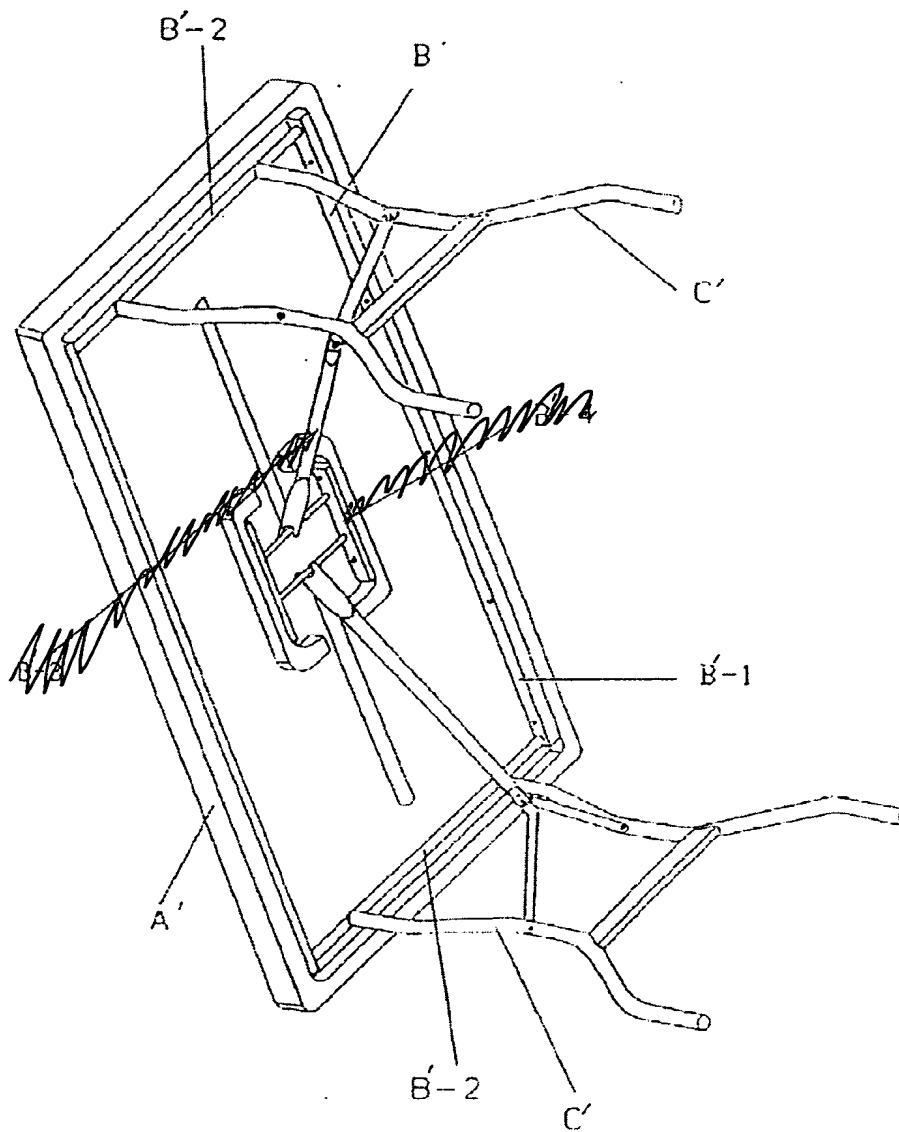
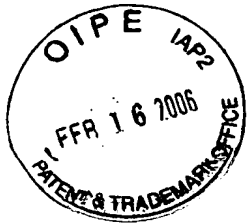


Figure 1
(Prior Art)